

RULES AND PUBLIC POLICY COMMITTEE

DATE: December 2, 2008

CALLED TO ORDER: 5:33 p.m.

ADJOURNED: 6:58 p.m.

ATTENDANCE

ATTENDING MEMBERS

Robert Lutz, Chair
Bob Cockrum
Ed Coleman
Monroe Gray, Jr.
Angela Mansfield
Joanne Sanders
Mike Speedy

ABSENT MEMBERS

Lincoln Plowman

AGENDA

PROPOSAL NO. 564, 2008 - reappoints Jennifer L. Ping to the Alcoholic Beverage Board of Marion County

"Do Pass"

Vote: 7-0

SUMMARY OF REPORTS FROM INVESTIGATIVE COMMITTEE ON ETHICS

PROPOSAL NO. 469, 2008 - censures Councillor Monroe Gray

"Do Pass As Amended"

Vote: 4-2-1

PROPOSAL NO. 577, 2008 - proposes an ordinance of the Marion County Income Tax Council to effect, pursuant to the authority granted by the Department of Local Government Finance, a reduction in the county option income tax rate that was imposed effective October 1, 2007, and to cast the votes of the City-County Council on such ordinance

"Do Pass"

Vote: 4-3

RULES AND PUBLIC POLICY COMMITTEE

The Rules and Public Policy Committee of the City-County Council met on Tuesday, December 2, 2008. Chair Robert Lutz called the meeting to order at 5:33 p.m. with the following members present: Bob Cockrum, Ed Coleman, Monroe Gray, and Joanne Sanders. Angela Mansfield and Mike Speedy arrived shortly thereafter. Lincoln Plowman was absent. Also in attendance were Councillors Ginny Cain and Jackie Nytes. Representing Council staff was Robert Elrod, General Counsel.

Chair Lutz asked all Councillors to introduce themselves.

PROPOSAL NO. 564, 2008 - reappoints Jennifer L. Ping to the Alcoholic Beverage Board of Marion County

Ms. Ping said that she was appointed to the Board in March of 2008. She said that it has been a wonderful experience meeting with neighborhood associations and businesses owners. She said that she had a wonderful opportunity to work out a particular issue between a neighborhood group and local business, where problems perceived were due to a third party. They were able to work out a solution, and she is pleased to serve.

Councillor Gray said that he watches the proceedings of the board often and Ms. Ping does a wonderful job serving.

Chair Lutz asked about Ms. Ping's attendance record. Ms. Ping said that she has missed only two meetings this year, both due to vacations that were scheduled prior to her appointment. She said that she has really enjoyed serving, and she encouraged Councillors to attend meetings to support the neighborhoods and make them feel more empowered.

Councillor Cockrum moved, seconded by Councillor Mansfield, to send Proposal No. 564, 2008 to the full Council with a "Do Pass" recommendation. The motion carried by a vote of 7-0.

Chair Lutz asked for consent to move Proposal No. 577, 2008 up on the agenda. Consent was given.

PROPOSAL NO. 577, 2008 - proposes an ordinance of the Marion County Income Tax Council to effect, pursuant to the authority granted by the Department of Local Government Finance, a reduction in the county option income tax rate that was imposed effective October 1, 2007, and to cast the votes of the City-County Council on such ordinance

David Reynolds, City Controller, distributed a handout (attached as Exhibit A). Mr. Reynolds emphasized what a great job the administration and the Council did in working together to pass a balanced budget for 2009. He said that at the time he took office, a five-year outlook was provided as to where the City's finances were headed, and it showed substantial negative balances in their tax-supported funds. Through the efforts of the Office of Finance and Management (OFM) and the Council to balance the budget in 2009, they have made substantial improvements. While they are not done and still have more work to do in that area, the initial projection of going negative in 2010 has been pushed back to 2012, by getting expenditures more in line with revenue. He said that this is still unacceptable in his opinion, and there is still

work to do. Mr. Reynolds said that many have asked why, instead of reducing the County Option Income Tax (COIT), this money could not be used to address the operating deficit. He said that statutorily, they cannot use this particular piece of the COIT revenue for that purpose. He explained how the COIT for the levy freeze works. In 2007, when the Council took action to set the COIT for the property tax levy freeze, it was a two-year rate that was set by the state and was set at 0.2% in 2008 and 0.3% in 2009. He said the revenue that is generated from that rate then comes to the City and is used to replace additional revenue that has historically grown over time due to levy growth. Since the levies were frozen, the revenue from the COIT replaces that levy growth. In 2008, the amount of revenue generated from that levy freeze COIT was approximately \$36 million. Mr. Reynolds explained that some of that revenue was distributed to local units to replace revenue that was formerly generated by levy growth. The excess, the difference between the revenue and distributions, is required to be held in reserve in the County Stabilization Fund, which is projected at approximately \$12 million in 2008. The fund will be used to replace needed revenue that is no longer being generated by levy growth. In 2009, the revenue is still in excess of the distributions that are necessary, but that dynamic changes in 2010, and the distributions are then greater than what is generated, and they will have to start accessing that reserve. If the freeze continues into 2011, that reserve will be completely depleted. Mr. Reynolds said that the Council will need to make a decision in the summer or fall of 2009, as well as every year thereafter, as to whether the levy freeze will continue and that revenue will continue to be made up from income tax or if the levy will be unfrozen to again realize the revenue from levy growth. He reiterated that this excess COIT cannot be used on the operating side for expenses and can only go into the Stabilization Fund to be used for distributions to replace lost revenue from freezing the levies. On November 7, 2008, the Department of Local Government Finance (DLGF) sent out a memo (included in Exhibit A), which provides an option for local government units to change the rate that they had previously certified. The memo explains two reasons for re-certifying that second-year rate for those entities taking advantage of this program: 1) House Enrolled Act (HEA) 1001 changed the statutory requirement that the rate DLGF certified had to be rounded to the nearest tenth of a percent so that it could be rounded to the nearest one hundredth of a percent and 2) because the State took over the Family and Children Welfare levy. When the rate was originally certified, they were operating under the assumption and made the calculation to certify that rate, assuming that the levy would be on the local side, and they would have to replace the growth from that levy. If that levy shifts, and becomes a state expense, there is then no revenue that is necessary to come back to the local units to make up for that loss of growth. By moving it to the state, if they stay at that 0.3% rate, then, excess dollars are being accumulated in a reserve fund and are not necessary to make the payouts to replace the levy growth. Mr. Reynolds said that the reduction of this rate will be felt by Marion County income taxpayers through a 0.3% reduction in the COIT rate, which will return \$5.7 million to Marion County income taxpayers. He said that for a family with a household income of \$40,000, that would equal about \$12, but looking at it from an aggregate standpoint, there is a multiplying effect by putting \$5.7 million back into the economy to be spent two or three times. The graph in the handout reflects that reduced rate and shows that there is sufficient revenue to keep the levies frozen through 2011.

Chair Lutz asked what the blue bar, which seems to be getting larger, represents on the chart. Mr. Reynolds explained that this bar represents the amount of money being distributed out to the local units. This does exponentially grow because each year they pick up the frozen levy from the prior year, as well. Chair Lutz asked if the city or county has any control over that expenditure or if it is a statutory directive. Mr. Reynolds said that the growth rate is set by the State and is based on a six-year average of personal income growth, so the state sets how much is distributed in revenue to replace that loss of levy

growth. Chair Lutz asked if OFM feels they can continue to do this and remain in good financial condition. Mr. Reynolds answered in the affirmative and said that this cannot be used to address the operating budget. Based on his calculations, which he has adjusted for the economic conditions, his model is conservative enough to keep the levies frozen through 2011 if that is the decision of the Council.

Councillor Sanders asked if this excess could also be used to give additional property tax relief. Mr. Reynolds said that there are three things the COIT could be used for: levy freeze, public safety or additional property tax relief. However, the rate for additional property tax relief has to be done in increments of five hundredths of a percent, and because this is only three hundredths of a percent, they could not give additional property tax relief with this money. Councillor Sanders asked about the Stabilization Fund and if that is a fund that the city invests in or if the state controls it until it reaches a certain amount. Mr. Reynolds said that the fund is held by the City and County. Councillor Sanders asked if the amount is three hundredths and not three tenths. Mr. Reynolds said that it is three hundredths, and the rate will go from 1.65 percent to 1.62 percent. Councillor Sanders said that this has been mis-represented by some of the media in some instances, and she wanted to make that clear. She said that this is really something that is out of their control, because they cannot use the money for operating expenditures and cannot take credit for giving a tax reduction because the state is telling them these are their options. Mr. Reynolds answered that they cannot use the money for operating expenses, but can take credit for returning the money to taxpayers, since it was offered by the state as an option. If they do not take the option, they can continue to take in more revenue than is needed to operate the program, so therefore, returning the money to taxpayers is certainly a local decision.

Councillor Mansfield said that when they passed the COIT increase in 2007, they had a certain set of rules before them at the time. Granted, the General Assembly came back and made more adjustments, but it seems the General Assembly continues to punt this issue. She is concerned that the local governments will later regret giving the money back if in the future the state decides it can then be used for other things. She said that maybe the city could lobby the legislature to request that it be used for other things, and she is concerned that they might have to ask for an increase in the future.

Councillor Cockrum said that other counties were given the same options, and asked if Mr. Reynolds is aware of the decision of the other counties. Mr. Reynolds answered in the negative. He said that he believes there are 14 counties participating in this program, but is not sure which have chosen this option.

Councillor Nytes said that the whole process has been confusing, and constituents seem to be losing confidence in local government, because they do not seem to know which way to go. She asked if the Stabilization Fund is held in the City's treasury. Mr. Reynolds answered in the affirmative. Councillor Nytes said that with many other types of funds held in the City's treasury, they are able to do inter-fund borrowing within a year, as long as they pay back at the end of the year. This helps forestall the amount borrowed in tax anticipation notes, where interest is paid. She asked why the City does not hold on to the extra amount of money to avoid the expense of later borrowing from outside entities and paying interest. Mr. Reynolds said that they try to allocate particular funds that are held in trust, so that borrowing is limited. Councillor Nytes said that any money borrowed has to be repaid, and she cannot imagine the City not repaying those funds. Mr. Reynolds said

that he is not comfortable with using money held in trust for a specific purpose for short-term borrowing. He said that he has taken the policy and position that dedicated funds should not be used in this way.

Councillor Nytes asked if Mr. Reynolds could inform the Council about the model that he used to determine the savings. She said that she continues to hear about layoffs and has apprehension about employment figures in the next 18 months and per capita income, which will have an impact on what the remaining rate will be capable of raising. Mr. Reynolds said the State does a revenue forecast, and he looked at the last one that projected through 2009 in preparation for the City's 2009 budget. The revenue forecast in that report suggests income growth just under 3%, and they have assumed a 2% income growth in 2010 and 2011 in the graphs provided. He said he also calculated the revenue at a 0% income growth, and they can still remain at a positive level in 2010 and 2011 with no growth. He said that he did not present that as the model, but wanted to explore that possibility and run those numbers. Councillor Nytes said that she is concerned that the next state forecast may be lower than that 2% model. Mr. Reynolds said in the past 50 years that there has only been one year that income has actually gone down. Councillor Nytes said that she is worried that there are so few opportunities for the City to protect themselves with these uncontrollables.

Councillor Nytes asked what the impact would be if the money is kept and maintained by the City. Mr. Reynolds said the amount held in that fund would increase by \$5.7 million in 2009, another \$5.7 million in 2010 plus 2%, or approximately \$6.5 million, and another \$6.5 million plus the 2% growth in 2011. Therefore, there would be approximately \$20 million in the reserve in 2011. Councillor Nytes asked if the City would then have another year before they would have to face the question of raising taxes. Mr. Reynolds said they would not have another year, because the difference between what they have to distribute versus revenue in 2011 might be \$20 million, but in 2012, that amount will be \$40 million. Councillor Nytes said that this is the reason they need to do all they can do to blunt the impact of those types of increases on the citizens. She said that they have paid the price for holding back on increases the last eight or nine years, until the increase cannot be held back any longer and then is overwhelming. Mr. Reynolds said that it is probably a true statement that changes will occur in state legislature, but they feel it is important to give the money back to taxpayers and put it back into the economy at this time. Councillor Nytes said she appreciates the analysis, but feels that the decision to give the money back to the taxpayers seems like a headline-grabbing decision instead of a cautious prudent step to use the tools given them by the state. She said she would hate to see the city dangling on the end of the string from the state again, and she feels the city is just reacting to those decisions and it gets harder every year to provide services to the citizens. She urged committee members to pass on this proposal, as it may later have a more negative effect on the City.

Councillor Gray asked if the money could be used for Public Safety. Mr. Reynolds answered in the negative. He said that when the Council raised the COIT, they allowed different portions to be used for different things, including some for public safety, but this 0.3% portion cannot be taken and shifted over to public safety.

Councillor Sanders asked if HEA 1001 addressed the fact that changes could be made to COIT outside of the timing of when they go into effect. Mr. Reynolds answered in the affirmative and said that Section 867 addresses that and indicates that any ordinance

adopted after November 15, 2008 and before January 1, 2009 will take effect January 1, 2009. Councillor Sanders asked what happens in October 2009 to the rate. Mr. Reynolds said it will remain the same as is passed to go into effect in January unless the Council takes action to change it before that time.

Chair Lutz asked if the state will issue a budget forecast on December 4, 2008. Mr. Reynolds said that he is not sure of the exact date and thought it was more toward the middle of the month, but it could be December 4, 2008. Chair Lutz asked if they then issue another forecast in April. Mr. Reynolds said that this is correct. Chair Lutz stated that if the Council does not act on this before the end of the year, it will not take effect until October of 2009. Mr. Reynolds stated that this is correct. Chair Lutz said that they cannot spend the money on anything else, and therefore it makes better sense to put \$5.7 million back into the local economy instead of holding onto it.

Councillor Gray asked if the proposal does not pass, if the money will stay in the fund. Mr. Reynolds answered in the affirmative. Councillor Gray asked if nothing can then be done with that money until October of 2009. Mr. Reynolds answered in the affirmative. He said that the money will continue to be collected if this is not acted on. Councillor Gray asked if citizens will then not receive a check in the mail for \$12. Chair Lutz said that the rate will be reduced, reducing the amount taken out of a taxpayer's income, and mailing out checks would cost more than the money returned. If they were talking about mailing out checks, he would not support it. Councillor Sanders said that the rate is therefore really only being reduced for nine months. Mr. Reynolds said that the rate is being reduced for the entire year beginning in January. Chair Lutz said that rate would continue unless more legislation is offered and passed to either raise it or reduce it further.

Councillor Cockrum said that this is more than just returning \$5.7 million into the community, because it will actually be spent several times over, helping the economy. He added that many times the city or state would get to the end of the year and have money left over in the budget and spend it instead of letting it accrue. He added that regardless of how much money is given to government, it seems they always find a way to spend it. He feels it would be better to give the money back to taxpayers and get it back into the local economy and face future problems as they arise.

Councillor Speedy stated that he feels that letting the money stay in the pockets of the taxpayer is the right thing to do and will have a lasting effect on the economy.

Chair Lutz said that whether it is \$5,000 or five cents, it is taxpayer money, and they have the right to decide what to do with it. The city should not take it from them through taxation unless it is needed and can be used for a legitimate government function.

Councillor Speedy moved, seconded by Councillor Cockrum, to forward Proposal No. 577, 2008 to the full Council with a "Do Pass" recommendation. The motion carried by a vote of 4-3, with Councillors Gray, Mansfield, and Sanders casting the negative votes.

SUMMARY OF REPORTS FROM INVESTIGATIVE COMMITTEE ON ETHICS

Chair Lutz provided a proposed report of the Rules and Public Policy Committee, which has been circulated among members of the committee. (Attached as Exhibit B) He reviewed key points of the report.

Councillor Mansfield said that she feels that Chair Lutz's report is a good reflection of the submitted reports, with the exception of the last sentence of the first paragraph on page four of the report that states: "The Rules and Public Policy Committee agrees with this finding and in this Committee's opinion Councillor Gray should be censured for his actions." Chair Lutz said that this was a suggestion made in the report from the Republican members of the Investigative Committee. Councillor Mansfield said that the report from the Republican members actually says that, although censure would be a proper sanction, the Committee determined that it would be inappropriate for the current Council to formally censure a Councillor for actions taken during meetings of a prior Council. She said that there seems to be some inconsistency. She asked if they could continue to go back to prior Councils to censure conduct, such as in Councillors who left meetings consistently early. She said that there seems to be some flip-flopping on the recommendations. She said that it seems some members of that prior committee failed to objectively review the facts and circumstances and now want to come back with new points. She added that there are no specifics in the minutes, and her recommendation is to strike that sentence or make it more closely reflect the statement in the Republican members' report.

Chair Lutz said that when he wrote this, the only specific act he referenced was the act taken on October 8, 2007 with Proposal No. 182, 2008, which has minutes reflecting the action. He said that he will be the first to admit that it exceeds this Committee's authority to censure a member, and he indicates such in his report. He added that he personally does not feel Councillor Gray should be censured for his actions with regard to the ethics form filing, as he asked for guidance and acted as he was advised. This Committee was charged, however, with making recommendations, but he feels it is the responsibility of the newly formed Ethics Committee or full Council body to determine the action. Councillor Cain, as the Chair of the new Ethics Committee, did not want to start the committee with acting on an issue from a prior Council that should have already been settled. He added that he feels the way the Investigative Committee was set up, it was doomed to fail, and there was really no investigation that took place. Therefore, he simply took something that was a matter of public record and is recorded in the minutes, which he witnessed personally and felt was inappropriate, and he incorporated that into his report.

Councillor Speedy said that the proposal was originally introduced in March of the prior Council's final year of office and should have been dealt with in a more timely manner, but was delayed. He added that while it is not ideal for a Council body to take action regarding a prior body's action, not taking action might allow for inappropriate action to be taken between the election and inauguration of the next Council. A Council member could act inappropriately in the last meeting of the year, knowing the new Council could not take any action against him or her, yet they would be allowed to come back and serve as if their actions were acceptable.

Councillor Mansfield said that neither report came back with a recommendation for censure regarding Councillor Gray's voting and actually says that it would be inappropriate. She said that she does not necessarily disagree with the conclusion of the report, but there are inconsistencies.

Chair Lutz read from the report submitted by Co-Chair Cain and said that it clearly stated that those actions must be and are hereby condemned. He said that he would like to put this issue behind them and move on. Councillor Mansfield said that there just seem to be

inconsistencies. Chair Lutz said that without proper investigation, it is hard to make recommendations. He said that he attached both reports and the agenda and minutes from the Ethics Board to his report to provide the whole picture.

Councillor Cockrum referred to the underlined sentence in the Republican members' report, and while it does not use the word censure, it definitely recommends that the actions be condemned. He said that this does not seem inconsistent.

Councillor Mansfield moved to "Amend" Chair Lutz's report to replace the sentence on page 4 which reads, "The Rules and Public Policy Committee agrees with this finding and in this Committee's opinion Councillor Gray should be censured for his actions" with the following language taken from the report of the Republican members of the Investigative Committee to read as follows: "However, although censure would be a proper sanction for such actions, the Committee determines that it would be inappropriate for the current Councillors to now formally censure a Councillor for actions taken during meetings of a prior Council."

General Counsel Robert Elrod said that before any amendments are offered, the Committee should move to consider the report submitted by Chair Lutz, so that it is properly on the table for consideration. Councillor Cockrum moved, seconded by Councillor Mansfield, to consider the Committee report as drafted by Chair Lutz. Mr. Elrod stated that the committee can now consider any amendments.

Councillor Mansfield repeated her previous motion to "Amend", which was seconded by Councillor Sanders.

Councillor Speedy said that he does not support the amendment, because it allows one party or the other to delay action on any issue such as this until the end of that member's term, and such a delay tactic keeps members from being held accountable. He said that conduct impacts the public image and members need to be held accountable even if there is the complication of an intervening election.

Councillor Coleman agreed and said that there is nothing that says this Committee has to only take comments from the recommendations forwarded by the Investigative Committee. He said that he feels Chair Lutz has taken points from both reports and drafted a very inclusive report. He said that by not taking action on the proposal until October and through delay tactics, he concludes that the last Council's intent was for the new Council to handle the issue.

Councillor Mansfield said that the Committee needs to be careful approaching things with political motivations and addressing past actions, when it is clear that the Ethics Board dealt with this matter. She said that she believes this goes beyond the scope of Council Resolution No. 80, 2007. She said that with her amendment, she feels the report is a fairly accurate reflection of the reports from the Investigative Committee.

Chair Lutz said the comments in his report were not made with political motivation because he does not want it to be based on that. He said that he read the minutes of what went on in the Ethics Board meeting, as well as the Investigative Committee. He said that the Investigative Committee was created by ordinance and it was improperly formed, in his opinion, and was destined for deadlock. He said that he does not want to dump this

responsibility on the new Ethics Committee, as they need to be forward-looking and approach things from a positive perspective. However, he does not believe Councillor Gray should have voted on something that was directly related to him personally.

Councillor Gray said this all began with the procedure of filling out a form, but has now progressed to actions that occurred in a Council meeting. Chair Lutz said that the only thing he saw in the reports that warranted censure was the issue of Councillor Gray voting on a matter directly affecting him. Councillor Cain stated that the charge was to investigate allegations in the newspapers, and this is an issue that was discussed. Councillor Gray asked what benefit comes from this action, since a new Council is in place. Chair Lutz said that he is not making any findings based on newspaper articles, but the benefit of this action is that Councillors will be more inclined to stop and think about whether or not they should vote on an issue on the floor of the Council if it directly relates to them. Councillor Gray said that members vote on issues that affect them all the time. Chair Lutz said that he does not and he does not feel most of the body does either.

Councillor Gray said that Councillor Cain has said that she did not want to continue with this issue and it was insisted that the committee continue investigation. He asked Councillor Cockrum, as president, what the motivation was to continue with this Investigative Committee. Councillor Cockrum said that this charge was set up by ordinance, and when he took over as president, no action had yet been taken to comply with the charge of the ordinance. He felt it was the duty of the body to adhere with their ordinances and deal with the matter and move on.

Councillor Cain said that she did not have a problem chairing this committee to try and do the right thing, and she feels her comments were related to a specific issue and were taken out of context by Councillor Gray.

Councillor Mansfield's motion to "Amend" failed by a vote of 2-4-1, with Councillors Cockrum, Coleman, Lutz, and Speedy casting the negative votes and Councillor Gray abstaining.

Councillor Cockrum moved, seconded by Councillor Speedy, to accept the report of the Rules and Public Policy Committee as submitted. The motion carried by a vote of 6-0-1, with Councillor Gray abstaining.

PROPOSAL NO. 469, 2008 - censures Councillor Monroe Gray

Chair Lutz passed the gavel to Councillor Cockrum.

Councillor Lutz moved, seconded by Councillor Speedy, to "Amend" Proposal No. 469, 2008 as shown in Exhibit C. Councillor Sanders offered a friendly amendment to the amended version to strike the "s" on resolutions in Section 1 and change the word "censure" to "investigate." Councillor Lutz accepted Councillor Sanders' friendly amendment and moved to "Amend" Proposal No. 469, 2008 as shown in Exhibit C with those proposed changes. The motion carried by a vote of 6-0-1, with Councillor Gray abstaining.

Councillor Mansfield said that she feels that censure would have been appropriate at the point of time the action was taken. She added that this proposal was originally written to

censure the false filing of an ethics form and then was changed to come up with a new charge that was outside the scope of the investigation. She said that it seems to be politically motivated to find something for which to censure Councillor Gray.

Councillor Lutz stated that this was not politically motivated, and he felt there was not enough investigation, and the recommendations for censure in the original proposal did not really merit censure. However, the one thing he knows that took place during this process that merits censure is the action that he witnessed on October 8, 2007, when Councillor Gray voted on a matter directly affecting him. Councillor Gray asked where in the Rules it says he cannot vote on such a matter. Councillor Lutz said that he is dumbfounded that Councillor Gray has even asked that question, because that indicates that he does not fully understand the issue. Councillor Gray asked where it is in the Rules. Councillor Lutz said that it is an ethical matter and should apply to all areas of life. Councillor Gray said that this did not affect him financially.

Councillor Cain said that they did try to address this issue in 2007, but the parliamentarian at that time also served as personal counsel to Councillor Gray and it did not go forward.

Councillor Lutz moved, seconded by Councillor Speedy, to forward Proposal No. 469, 2008 to the full Council with a "Do Pass as Amended" recommendation. The motion carried by a vote of 4-2-1, with Councillors Mansfield and Sanders casting the negative votes and Councillor Gray abstaining.

There being no further business, and upon motion duly made, the meeting was adjourned at 6:58 p.m.

Respectfully Submitted,

Robert Lutz, Chair

RL/nsm

STATE OF INDIANA

DEPARTMENT OF LOCAL GOVERNMENT FINANCE
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INDIANAPOLIS, IN 46204

MEMORANDUM

TO: County Auditors and County Council Members

CC: County Commissioners and City/Town Executives

FROM: Cheryl A.W. Musgrave, Commissioner

DATE: November 7, 2008

SUBJECT: Local Option Income Tax (LOIT) Rates

The purpose of this memorandum is to notify counties that the Department of Local Government Finance ("DLGF") hereby gives counties that adopted LOIT for levy freeze in 2007 the option of imposing a lower Local Option Income Tax (LOIT) rate to account for the changes made in HEA 1001 (P.L. 146-2008) to the state's assumption of local property tax levies and the removal of the requirement that DLGF and the Department of Revenue (DOR) round the tax rate upward.

The reason for granting this option to counties to reduce LOIT rates is to reflect the approval by the General Assembly of legislation that ended the county's authority to levy property taxes for certain funds. Specifically, the state's assumption of the local child welfare costs occurred during the first year that numerous counties imposed the new LOITs. Since the county adopted its year 2 rate before passage of the new law, the year 2 rate includes a tax rate to fund two years' worth of welfare levy growth. As the state is now paying the local welfare costs this means the LOITs previously adopted for levy freeze will now generate too much revenue. In recognition of this issue, the General Assembly required LOIT used to fund child welfare levy growth in year 1 instead be used to provide homestead property tax credits. IC 6-3.5-1.5-1(d). However, the General Assembly made no provision for LOIT used to fund child welfare levy growth in year 2. As a result, the year 2 LOITs will generate too much revenue to pay for the levy freeze and any excess will be deposited into the county stabilization fund. IC 6-3.5-1.1-24(o).

HEA1001 (P.L. 146-2008) also removed the requirement that DLGF and DOR round up to the nearest tenth when certifying the levy freeze LOIT rates. This means the new tax rates certified by DLGF and DOR (starting in year 2) will be lower than those previously certified. Thus, DLGF and DOR's original year 2 certification is too high. As a result, DLGF and DOR need to re-certify a year 2 LOIT rate, giving the counties the option to adopt this lower rate sometime this fall. IC 6-3.5-1.5-3.

This memorandum grants counties the option of imposing a lower LOIT rate to prevent the collection of excess LOIT revenues for the reasons stated above. As a consequence of the

granting of this option to counties, the previously issued certification of LOIT rates to counties sent a couple of months ago should be disregarded. Updated reports with the new, lower LOIT rate that is eligible to be adopted by counties, are attached to this correspondence.

Concerning the excess revenue used to fund child welfare levy growth in year 1, if a county has an existing Property Tax Relief LOIT, this revenue will instead be used to provide property tax credits in the same way (among the three credit options) as the existing Property Tax Relief LOIT, unless a new ordinance is passed to the contrary. For a county that does not have an existing Property Tax Relief LOIT #2 (this is only Marion County), they will need to select a credit type (or combination of credit types).

If you have any questions about this memorandum, please contact John Mallers, Budget Division Director, at (317) 234-3937 or jmallers@dlgf.in.gov.

STATE OF INDIANA

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Certification of Local Option Income Tax Marion

Operating (Levy Freeze) LOIT

Indiana Code 6-3.5-6-30 requires the Department of Local Government Finance and the Department of Revenue to certify the rate that must be imposed in a county to raise tax revenues as specified.

2009 Rate Certified in 2007:	0.30000%
2009 Rate Certified in 2008 (adjusted for statutory policy changes):	0.27000%
<u>The certified rate is to be used as follows:</u>	
Rate for Levy Freeze:	0.26145%
Rate for Property Tax Relief*:	0.00860%

*This rate is in addition to any rate adopted by Marion County under IC 6-3.5-6-32. Collections in excess of the amount needed to cover levy growth shall be applied as property tax relief under IC 6-3.5-1.5-1, version (b), subsection (d), unless a new ordinance is passed to the contrary: "Notwithstanding IC 6-3.5-1.1-24(h) and IC 6-3.5-6-30(h), if a county has adopted an income tax rate under IC 6-3.5-1.1-24 or IC 6-3.5-6-30 to replace property tax levy growth, the part of the tax rate under IC 6-3.5-1.1-24 or IC 6-3.5-6-30 that was used before January 1, 2009, to reduce levy growth in the county family and children's fund property tax levy and the children's psychiatric residential treatment services property tax levy shall instead be used for property tax relief in the same manner that a tax rate under IC 6-3.5-1.1-26 or IC 6-3.5-6-30[#] is used for property tax relief." Please contact John Mallers at jmallers@dlgf.in.gov with any questions about administering this provision. A memorandum with additional details about the administration of this provision is forthcoming.

Other LOIT Options

Property Tax Relief LOIT

Indiana Code 6-3.5-6-32 also allows a county to adopt an additional COIT to:

1. Provide local property tax replacement credits to all property;
2. Provide or increase the homestead credit percentage uniformly; or
3. Provide local property tax replacement credits to qualified residential property.

This additional COIT can be raised in increments of 0.05% up to a maximum of 1.00%.

Public Safety LOIT

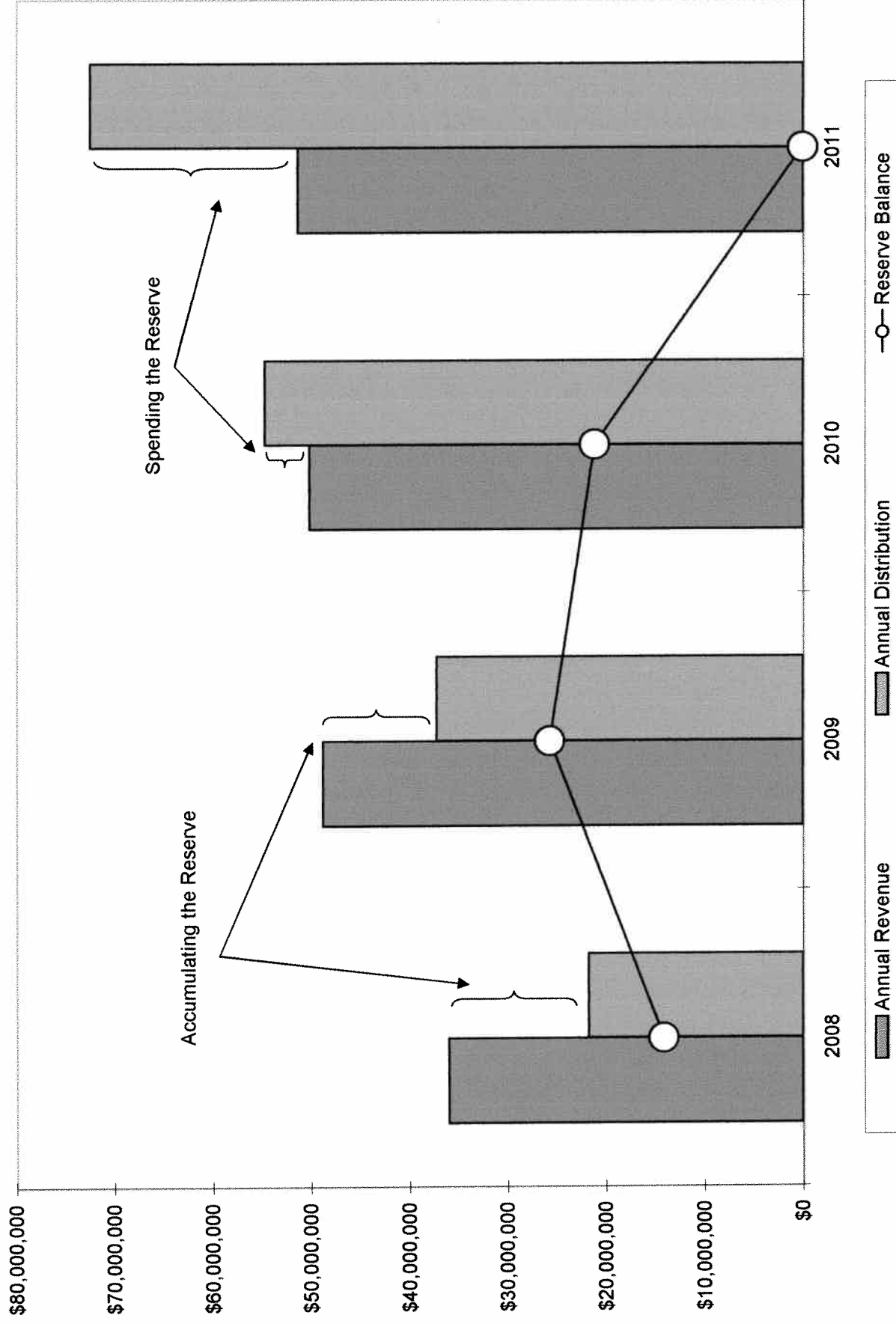
Indiana Code 6-3.5-6-31 also allows a county to adopt an additional COIT for Public Safety. In order to adopt this additional COIT, a county must have adopted a 0.25% rate for the additional COIT for Operating (Levy Freeze), the COIT for Property Tax Relief, or a combination of both. The Public Safety COIT rate can be adopted up to a maximum of 0.25%.

Dated this 7th day of November, 2008.

Cheryl A.W. Musgrave, Commissioner
Department of Local Government Finance

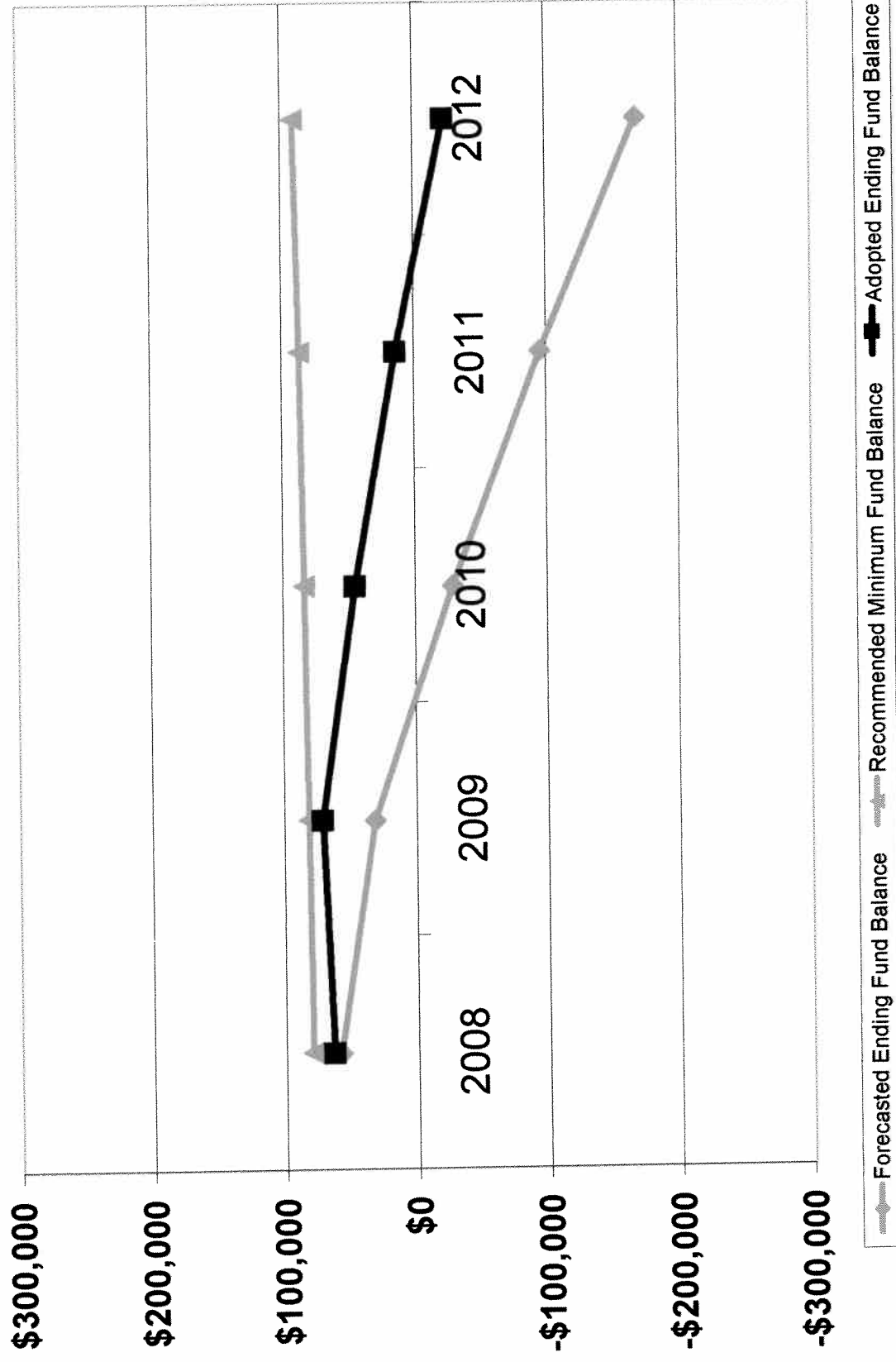
[#]The DLGF believes this code cite is in error and should actually refer to IC 6-3.5-6-32.

Financing the Property Tax Levy Freeze



Consolidated City of Indianapolis Adjusted Fund Balance - Result of Balanced Budget

Tax Supported Funds
(\$ in Thousands)



**REPORT OF THE RULES AND PUBLIC POLICY COMMITTEE
ON THE INVESTIGATIVE COMMITTEE FINDINGS RELATIVE TO MONROE GRAY**

This matter has come before the Rules and Public policy Committee as a result of the City County Council's adoption of Council Resolution 80, 2007 on October 29, 2007. The function of this committee as well as of the Investigative Committee is governed by the parameters of Resolution 80. Section 3 of Resolution 80 is the operative part of the Resolution and provides:

"SECTION 3. The purpose of the investigation to be conducted by the committee is to determine if the public allegations against Councillor Monroe Gray are true and whether such conduct warrants censure by the Council, and further the committee should make such recommendations for change, to the Rules and Public Policy Committee in the Code of Ethics or other procedures as may be appropriate to assure that Councillors are held to the highest ethical standards. The Rules and Public Policy Committee will, after considering the report of the committee, report on such findings to the Committee of the Whole." Sec. 3 Gen Res. 80.

As a result of the wording of Resolution 80 the function of the Rules and Public Policy Committee is limited to two (2) duties: 1) to receive the Report(s) of the Investigative Committee, and 2) to report on such findings to the Committee of the Whole. Under Resolution 80 the Rules and Public Policy Committee has no directive to make findings or recommendations concerning actions to be taken specifically in regard to Councillor Gray's alleged conduct.

In addition, since the adoption of Resolution 80 on October 29, 2007 the City County Council on August 11, 2008 adopted a new ethics code for the city of Indianapolis as General Ordinance 55, 2008. As part of that ordinance a new standing council committee on ethics was established which is charged with the duty to:

"Prior to March 1 of each year, the ethics committee shall review the standards of ethical conduct for councillors and devise and propose any amendments the committee deems necessary or appropriate." Sec. 151-1101

Section 151-1102 also delegates to the new ethics committee the duty, among other things, to conduct a "...review of alleged violations" as well as to conduct investigations of any alleged misconduct by councilors.

With the adoption of General Ordinance 55 the Rules and Public Policy Committee would recommend that the directive to the Investigative Committee in Section 3 of Resolution 80 to "...make such recommendations for change..." be referred to the new ethics committee for its consideration. The Rules and Public Policy Committee does just that as to recommendations for changes to our council rules and/or the municipal code.

As mentioned above, pursuant to the terms of Resolution 80 the charge to the Rules and Public Policy is merely to accept the report(s) of the Investigative Committee and relate same to the Committee of the Whole. Resolution 80 does not seem to contemplate that the Rules and Public Policy Committee do anything else or that the Rules and Public Policy Committee should even make any findings and/or recommendations at all. In a perfect world this committee, given the adoption of General Ordinance 55, 2008, would think it would make sense to refer this entire issue to the new standing ethics committee established by General Ordinance 55. However, that is a committee of equal number of members of both parties and the Rules and Public Policy Committee believes that the standing ethics committee needs to start off on a new slate with

nothing from the past that could poison its goal of adopting an ethics code for the full council. That being said, the Rules and Public Policy Committee recognizes that it is exceeding, via this report, its actual charge as contained in Resolution 80. The Rules and Public Policy Committee feels it is appropriate to make recommendations to the Committee of the Whole on the action it should take as a result of the reports of the Investigative Committee. This way it avoids this matter being referred to the new standing ethics committee and it also allows this council, the citizens of Indianapolis and Councillor Gray to put this matter to rest. Further this action of making recommendations based on the Investigative Committee's two (2) separate minority reports by the Rules and Public Policy Committee would not have been taken, nor would it have been appropriate, had the Investigative Committee issued one majority report.

Council Resolution 80, 2007's directive to the Investigative Committee was to investigate, make findings and recommendations. The Investigative Committee, in reality, was unable to investigate and as a result made no findings. From a review of the two reports issued by the Democratic Members and the Republican Members it would seem the two caucuses of the Investigative Committee had a difficult time reaching a consensus relating to its charge. The Rules and Public Policy Committee did hear what amounts to two (2) minority reports from the Investigative Committee. One report from the Democratic members and one from Republican members was received by the Rules and Public Policy Committee at its committee meeting on November 11, 2008. There was discussion after receiving the reports and, upon motion duly made and seconded, the reports were received by the Rules and Public Policy Committee.

The Investigative Committee did not subpoena witnesses and did not hear any direct testimony regarding the allegations.

The Rules and Public Policy Committee concludes from a review of the two reports of the Investigative Committee that there were essentially six allegations made against Councillor Gray. Those allegations are as follows:

1. Was Monroe Gray paid a salary by the Indianapolis Fire Department but not assigned any duties in violation of the Ghost Employment Statute, IC 35-44-2-4?
2. Did Monroe Gray violate the Conflict of Interest Statute, IC 35-44-1-3 by failing to file proper disclosures with respect to contracts by his company with United Water, a contractor with the City?
3. Did Monroe Gray violate the Conflict of Interest Statute, IC 35-44-1-3 by failing to file proper disclosures with respect to his wife's interest in the bar in the Carson Center?
4. Did Monroe Gray improperly continue to use the Council's General Counsel to rule on matters relating to his actions as Council President, while the General Counsel represented him and his business?
5. Were items omitted or misstated on the 2006 ethics form filed by Councillor Gray with respect to his ownership interests in Mid-Region Concrete which did business with Trotter Construction?
6. Did Monroe Gray mis-use his position as President, by voting on matters related to his personal interests, to delay investigation of the allegations against him?

Paragraphs numbered 1 through 3 all involve possible violations of criminal statutes. Those are matters for the Prosecuting Attorney to pursue. The Prosecuting Attorney advised the investigative committee that he is prohibited by law from disclosing whether there is a criminal investigation pending. The Investigative Committee recommends that these allegations be formally referred to the Prosecuting Attorney by delivering to him a copy of this report. The Rules and Public Policy Committee would recommend that any possible criminal issues be left

totally to be dealt with by the criminal justice system and the Council take no action at all on those matters.

The Investigative committee advised that the matters in paragraph 4 have been referred to the Supreme Court Disciplinary Commission. The Investigative Committee did not receive any response to its inquiry to the Commission. The Investigative committee recommends that this matter be left to the Disciplinary Commission. As this allegation is directed primarily at the former general counsel to the City County Council, the Rules and Public Policy Committee would also recommend its resolution be left to the Disciplinary Commission. As one of the Investigative Committee's reports notes, the amendments adopted to the Council Rules since this Committee was established, prohibit such conflicts in the future.

Allegation 5 involves possible omitted or misstated information on the 2006 ethics form filed by Councillor Gray with respect to his ownership interests in Mid-Region Concrete which did business with Trotter Construction.

One of the Investigative Committee reports relates that the Ethics Board met on April 13, 2007 and the only item on their agenda was the request made by Councillor Gray to determine if the 2006 ethics form he submitted was in compliance with the city's ordinance. The Ethics Board was not convened because of a complaint, but rather because of a request from Councillor Gray in an effort to assure compliance. Councillor Gray stated he had obtained advice from the then Council attorney as to whether he was required to report that he was the majority owner of Mid-Region Concrete. Mid-Region did not have any direct involvement with the city but was involved in a project as a subcontractor for Trotter Construction for Indianapolis Public Schools. Trotter Construction did work for the city but Mid-Region Concrete was not involved in any of those contracts. At that time, the council attorney advised Councillor Gray that he did not need to disclose this because he did not benefit from any contracts with the city.

The Ethics Board, acknowledging the form's confusion, did find that technically, due to the form's language, Councillor Gray should have disclosed the relationship and required him to submit an amended form indicating same. Councillor Gray proceeded to abide by the Board's finding and filed a revised report.

The Rules and Public Policy Committee recommends that the full Council determine that this issue was adequately addressed by the Ethics Board and its decision of May 1, 2007 and that no further action be taken. This conclusion is reached because the committee recognizes that it is difficult enough for attorneys to clearly interpret complicated ordinances and ambiguous forms such as the ethics disclosure form. It is even more difficult for non-attorneys and the non-attorney should be able to rely on the advice of counsel, even if it later turns out to be incorrect.

The allegations of paragraph 6 involve Monroe Gray's alleged mis-use of his position as President, by voting on matters related to his personal interests, to delay investigation of the allegations against him. In some ways this is the most troubling of all of the allegations in that it involves a clear misuse of power. It also consists of actions that occurred at full council meetings so many of the current councillors witnessed the activity personally. It is believed that this allegation relates directly to Councillor Gray's actions at the City County Council meeting of October 8, 2008 when Councillor Gray, acting as the president of the council did not place Proposal 182, 2007 (proposal to establish a committee to investigate allegations against Councillor Gray) on the agenda under unfinished business and then by voting on the issue when his ruling was appealed to the full council.

One of the Investigative Committee's reports found with respect to the allegations in paragraph 6 that President Gray improperly used his prerogative as president to delay Council consideration of resolutions to censure his conduct and that he continued to vote with respect to a resolution directed at him personally. One of the committee reports determines that the actions of Monroe Gray, while president of the Council, showed disregard for the ethical standards to which a councillor should be held, by continuing to vote on matters clearly directed to his personal interests. The committee further finds that such conduct has adversely affected the public

confidence in the Council. The Committee concludes that Monroe Gray should have abstained from voting on matters respecting resolutions dealing with his personal conduct. The Rules and Public Policy Committee agrees with this finding and in this Committee's opinion Councillor Gray should be censured for his actions.

The Investigative Committee's two reports made the following aggregate recommendations to the Rules and Public Policy Committee to assure that Councillors are held to the highest ethical standards. The Rules and Policy Committee recommendations for the disposal of each follows in parentheses:

1. Councillor Gray be censured for filing a false ethics disclosure statement.
(As indicated above this item was handled by the Ethics Board and the Rules committee recommends no further action is required.)
2. The Committee on Rules and Public Policy consider amendments to the Council Rules on abstentions, making abstention mandatory when a Councillor has a personal interest in the outcome of the vote. (This is now the responsibility of the standing ethics committee and the Rules and Public Policy Committee would recommend deferring consideration to the standing ethics committee)
3. The Committee defer consideration of further recommendations with respect to the Ethics Code until the currently proposed revisions have been acted on by the Council. (This is now the responsibility of the standing ethics committee and the Rules and Public Policy Committee would recommend deferring consideration to the standing ethics committee)
4. This committee continue in existence until the matters referred to the Prosecuting Attorney and Supreme Court Disciplinary Commission have been concluded, so the Committee can then determine whether further investigations should be conducted or additional sanctions should be imposed. (The Rules and Policy Committee took action to dissolve the Investigative Committee at its November 11 meeting, finding that its purpose was completed upon filing of reports).
5. An ordinance to establish a board to exclusively review an ethics allegation against a councilor. The board shall consist of:
 - a. Two (2) retired judges – one appointed by the majority and one by the minority of the council
 - b. Two (2) law professors - one appointed by the majority and one by the minority of the council
 - c. Two (2) persons in business (corporations, LLC) practicing in the ethics decisions of such entity
 - d. One (1) representative of a respected non-profit organization or association (i.e., the Indianapolis Chamber of Commerce) as determined by that entity.
(This is now the responsibility of the standing ethics committee and the Rules and Public Policy Committee would recommend deferring consideration to the standing ethics committee)

Respectfully submitted,


Robert B. Lutz

Chairman, Rules and Public Policy Committee

REPORT OF INVESTIGATING COMMITTEE
Submitted by Ginny Cain
July, 2008

This committee was established by City-County Council Resolution No. 80, 2007. The committee was directed by Section 3 of that resolution to review certain public allegations against Councillor Monroe Gray to determine (1) if the allegations are true, (2) whether such conduct warrants censure by the council, and (3) to make recommendations to assure Councillors are held to the highest ethical standards.

THE ALLEGATIONS

The committee has reviewed the public allegations and public documents. The committee directed correspondence to the Marion County Prosecuting Attorney, the Marion County Ethics Board, and the Supreme Council Disciplinary Commission inquiring about any pending actions respecting the allegations. The committee has held public hearings to discuss the allegations and responsibilities of the committee.

The committee has identified six issues raised by the allegations:

Allegation One: Was Monroe Gray paid a salary by the Indianapolis Fire Department but not assigned any duties in violation of the Ghost Employment Statute, IC 35-44-2-4?

Allegation Two: Did Monroe Gray violate the Conflict of Interest Statute, IC 35-44-1-3 by failing to file proper disclosures with respect to contracts by his company with United Water, a contractor with the City?

Allegation Three: Did Monroe Gray violate the Conflict of Interest Statute, IC 35-44-1-3 by failing to file proper disclosures with respect to his wife's interest in the bar in the Carson Center?

Allegation Four: Did Monroe Gray improperly continue to use the Council's General Counsel to rule on matters relating to his actions as Council President, while the General Counsel represented him and his business?

Allegation Five: Were items omitted or misstated on the 2006 ethics form filed by Councillor Gray with respect to his ownership interests in Mid-Region Concrete which did business with Trotter Construction?

Allegation Six: Did Monroe Gray mis-use his position as President, by voting on matters related to his personal interests, to delay investigation of the allegations against him?

FINDINGS

The committee concludes that Allegation One, Two and Three involve possible violations of criminal statutes. As such, those are matters for the Prosecuting Attorney to pursue. The Prosecuting Attorney has advised the committee that he is prohibited by law from disclosing whether there is a criminal investigation pending. The Committee recommends that these allegations be formally referred to the Prosecuting Attorney by delivering to him a copy of this report.

The committee is advised that the matters of Allegation Four have been referred to the Supreme Court Disciplinary Commission. Although the Committee has not received any response to their inquiry to the Commission, the committee recommends that this matter be left to the Disciplinary Commission. The amendments adopted to the Council Rules since this Committee was established, prohibit such conflicts in the future.

The committee has reviewed the actions of the Ethics Board with respect to Allegation Five. The Corporation Counsel, as secretary of that Board, has advised the committee that no actions are currently pending with respect to that matter. The minutes of the Ethics Board do not clearly reveal what issues were considered by the Board. The Board seems only to have considered the admission by Councillor Gray that his answer to Question 7 on the disclosure form was false and found that to be a "technical violation" of the Code. There is no mention in the minutes about his failure to answer Question 8 on the form. The Board's decision was to recommend that Councillor Gray file an amended disclosure form. The Board's minutes report one member's opinion that the Board did not have the ability to take disciplinary action against an elected official and did not recommend any disciplinary actions against Councillor Gray. That position seems contrary to the provisions of Sec. 293-108. At the very least, the Board should have reported the violation to the Council or prosecuting attorney for appropriate sanctions. The forms are filed under penalties for perjury. Allowing an amendment to correct a false statement, without recommending any penalty or disciplinary action, in effect means that there was no penalty for making a false statement on the disclosure form. The Committee concludes that the interpretation of the Ethics Board in allowing an amendment of a false disclosure form did not effectively accomplish the intent of the ordinance. Because it involved the 2006 filing and the Ethics Board has ruled on the matter, the committee finds no basis for it to take further action. However, the committee recommends that the Ethics Code be amended to create mandatory penalties for false statements in the disclosure forms.

The Committee finds with respect to Allegation Six that the President improperly used his prerogatives as president to delay Council consideration of resolutions to censure his conduct and that he continued to vote with respect to a resolution directed at him personally. The committee determines that the actions of Monroe Gray, while president of the Council, showed disregard for the ethical standards to which a councillor should be held, by failing to make disclosures of personal business interests as required by law, by failing to inquire of city business done by those with whom his business was contracting, by continuing to vote on matters clearly

directed to his personal interests, and by allowing his personal attorney to advise the Council on procedures relating to this personal interest and refusing, after being requested to do so, to seek independent counsel for the Council on such matters. The committee further finds that such conduct has adversely affected the public confidence in the Council. The Committee concludes that Monroe Gray should have abstained from voting on matters respecting resolutions dealing with his personal conduct. The Committee recommends that revisions to the Council Rules be considered that would make such abstentions mandatory.

The Committee finds that the facts as reported seem substantially true. Further investigation at this time would be costly without producing substantial information that would be helpful to the committee.

CENSURE

Because Allegations One, Two, Three and Four are subject to actions by other officials, the Committee recommends that the consideration of censure on these allegations be postponed until those actions are known.

Because the Ethics Board did not recommend any disciplinary action with respect to Allegation Five after finding a violation, the Committee recommends that Councillor Gray be censured for filing a false ethics disclosure. Further, the committee recommends that amendments be incorporated in the new ethics code to create mandatory penalties for making false statements on the disclosure forms.

Because the prior Council failed to act with respect to Allegation Six, prior to the expiration of the term of that Council, the Committee is confronted with the issue of whether or not it is appropriate for the current Council to deal with misconduct occurring during a prior Council's term. As stated in the previous finding in this report, the Committee has determined that Councillor Gray acted improperly in voting on matters of his personal interest, allowing his personal attorney to act as Parliamentarian, refusing to provide independent counsel when decisions involving his personal interests were being considered, and thereby delaying consideration of his conduct while serving as President of the Council. To maintain the integrity of the Council, those actions must be, and are hereby, condemned. *Although Censure would be a proper sanction for such actions, the Committee determines that it would be inappropriate for the current councillors to now formally censure a councillor for actions taken during meetings of a prior Council.

RECOMMENDATIONS

The committee makes the following recommendations:

1. Councillor Gray be censured for filing a false ethics disclosure statement.
2. The Committee on Rules and Public Policy consider amendments to the Council Rules on abstentions, making abstention mandatory when a Councillor has a personal interest in the outcome of the vote.
2. The Committee defer consideration of further recommendations with respect to the Ethics Code until the currently proposed revisions have been acted on by the Council.
3. This committee be increased by one member so that a majority may be obtained.
4. This committee continue in existence until the matters referred to the Prosecuting Attorney and Supreme Court Disciplinary Commission have been concluded, so the Committee can then determine whether further investigations should be conducted or additional sanctions should be imposed.
5. The General Counsel is directed to draft such ordinances or resolutions as are necessary to implement the recommendations in this report.

REPORT OF DEMOCRATIC MEMBERS
OF THE INVESTIGATIVE COMMITTEE
TO THE RULES AND PUBLIC POLICY COMMITTEE

The Democratic Members of the Investigative Committee hereby make this Report to the Rules and Public Policy Committee pursuant to Council Resolution No. 80, 2007 and by motion of the Investigative Committee (the "Committee").

Council Resolution No. 80, 2007

The Resolution passed by the then existing Council in 2007 to investigate certain allegations regarding the Ethics Form submitted by Councillor Monroe Gray. (See copy of Resolution attached as Exhibit A). The Resolution passed only after an amendment was adopted to make the Committee bi-partisan to ensure a fair review of the matter. Co-chairs were appointed by each party and were to consult each other regarding scheduling and reporting procedures. Unfortunately, one of the co-chairs proceeded to convene the July meeting of the Committee, even though the other had made it clear through telephone messages that he would be absent and wanted the date to be changed. Additionally, the co-chair proceeded without establishing a quorum, reading into the record a report prepared by her and, presumably, the Counsel to the Council. No input was solicited from Democratic members of the Committee.

Such conduct and the resulting report did not meet the requirements or the spirit of the Resolution. At best, the conduct was disrespectful to the other co-chair, resulting in a complete breakdown of communication among committee members. At worst, it was, in and of itself, a form of behavior that falls short of the "...highest ethical standards..." referenced in Section 3 of the resolution.

We reference here also that in the May 1, 2008 minutes of the Committee, Mr. Elrod specified that the scope of the investigation was found in Section 3 of the Resolution.

Ethics Form Allegation

The Committee did not subpoena witnesses and did not hear any direct testimony regarding this matter nor was any other evidence reviewed by the Committee. The meetings of the Committee consisted of discussion among the members of the Committee and the Council's attorney. On May 1, 2008, the Committee discussed Councillor Gray's ethics form and the City of Indianapolis – Marion County Ethics Board's (the "Ethics Board") decision. According to the minutes of that meeting, Councillor Virginia Cain stated that she "...believes that has also been adequately dealt with...". (See Investigative Committee on Ethics, Committee Minutes, May 1, 2008, Page 1.) Although this statement was the consensus of the Committee members, we, the Democratic Members of the Committee, expand upon this statement, based on the Ethics Board meeting minutes. (See copy of Ethics Board meeting minutes, April 13, 2007, attached as Exhibit B.)

On April 13, 2007, the Ethics Board held a meeting and the only item on their agenda was the request made by Councillor Gray to determine if the 2006 ethics form he submitted was in compliance with the city's ordinance. We reiterate, the Ethics Board was not convened because of a complaint, but rather because of a request from Councillor Gray in an effort to assure compliance. Councillor Gray stated that prior to

submitting his ethics form, he obtained advice from the then Council attorney as to whether he was required to report that he was the majority owner of Mid-Region Concrete. Said company did not have any direct involvement with the city but was involved in a project as a subcontractor for Trotter Construction for Indianapolis Public Schools. Trotter Construction did work for the city but Mid-Region Concrete was not involved in any of those contracts. Mid Region did not receive any compensation from city-county tax dollars. At that time, the council attorney advised him that he did not need to disclose this because he did not benefit from any contracts with the city.

The Ethics Board discussed the confusion as to whether or not Councillor Gray should have disclosed this. The Ethics Board noted that he did not directly benefit from any city contracts, nor did he vote on any contracts awarded to Trotter Construction. The Ethics Board noted that the council attorney stated that he advised Councillor Gray that he did not need to disclose this. The Ethics Board, although acknowledging the form's confusion, did find that technically, due to the form's language, Councillor Gray should have disclosed this and required him to submit a form indicating this. In other words, the consequence the Ethics Board chose to impose was a revised filing of the 2006 Ethics form. Councillor Gray proceeded to abide by the Board's finding and filed a revised report.

Based on the Ethics Board minutes, the board did not appear to believe that Councillor Gray tried to hide anything, but that it was a difference of interpretation of what the form was requiring. The Ethics Board also noted that no complaint was filed regarding this matter and that Councillor Gray himself requested the Ethics Board to review this.

As the Committee stated during the May 1 meeting, it is our opinion that the Ethics Board adequately addressed the Ethics Form Allegation and, no further action is required, including censure. Censure is inappropriate because the matter occurred outside of council meetings and, based on the Ethics Board determination, the matter is moot. It should be noted that although the minutes of the Ethics Board are referenced in discussions of the Committee, said minutes were not attached to the Committee's meeting minutes nor does it appear that all Committee members had access to copies of the Ethics Board Minutes. As the Committee was charged with determining the truth of allegations, this raises the question: What means were used to weigh the truth? It was established early on that no witnesses were deposed nor testimony taken as part of the search for truth.

Extraneous Allegations

During some of the Committee meetings, the Republican co-chair attempted to introduce additional unsubstantiated allegations (without testimony or evidence), which not only violated the charge of the Committee and was outside the authority of the Resolution given to the Committee, but also illustrated what might be construed as personal agendas that fall short of the "...highest ethical standards..." referenced in Section 3 of the Resolution. This Report will not address these unsubstantiated allegations other than to comment that these allegations are beyond the authority of the Committee and the Council, and should be appropriately addressed by other parties such as the Marion County Prosecutor. It should be noted that no action has been taken by the Prosecutor in the more than eighteen months that have passed since the April 13, 2007

review of Councillor Gray's request by the Ethics Commission, and since the various newspaper articles were posted. It should be further noted that no action by the Prosecutor has followed since the inquiry made by President Cockrum at the request of the Committee, nearly eight months ago.

Recommendations

Subsequent to the passage of this Resolution, a number of changes have been made to the city-county's ethics ordinances including the establishment of a new standing committee under Council rules, to be called the Ethics Committee.

The conduct of the current Investigative Committee raises the question: Can Council members investigate their colleagues objectively and without partisan overtones? Therefore, the Democratic Members of this Committee recommend the following:

1. An ordinance to establish a board to exclusively review an ethics allegation against a councilor. The board shall consist of:
 - a. Two (2) retired judges – one appointed by the majority and one by the minority of the council
 - b. Two (2) law professors - one appointed by the majority and one by the minority of the council
 - c. Two (2) persons in business (corporations, LLC) practicing in the ethics decisions of such entity
 - d. One (1) representative of a respected non-profit organization or association (i.e., the Indianapolis Chamber of Commerce) as determined by that entity.
2. Since the Committee's authority to refer matters to other entities is not defined by the Resolution, we recommend that this Investigative Committee has met its obligation pursuant to the Resolution and should be dissolved, upon the action of the Rules and Public Policy Committee.

Respectfully submitted,

William Oliver, Councillor
Co-Chair

Joanne Sanders, Councillor

Dated: _____



**THE COUNCIL
CITY OF INDIANAPOLIS
MARION COUNTY**

BOB COCKRUM
Councillor, District 22
President

March 26, 2008

Mr. Chris Cotterill
Corporation Counsel
Secretary of Ethics Board
1601 City County Building
Indianapolis, IN 46204

Dear Mr. Cotterill:

In December 2007, the City-County Council formed a Special Investigation Committee to review charges of unethical conduct by its then President, Monroe Gray, involving errors in his Financial Statements filed with the Ethics Board and conflicts of interest arising from the continuing use of Aaron Haith, General Counsel for the Council, as his personal attorney.

The Committee met last week and requested that, as President of the Council, I inquire whether your office has any open investigations continuing in these matters that might be compromised should the Committee begin investigations of these matters.

If you are continuing to investigate these matters, the Council will likely defer actions until your investigation is concluded.

I would appreciate a response to this letter in the next two weeks, so that we have this information before the next meeting of the Investigations Committee. Thank you for your prompt attention to the request.

Respectfully yours,

A handwritten signature in cursive script that reads "Bob Cockrum".

Bob Cockrum

BC/nsm



March 31, 2008

Bob Cockrum
City County Council President
6004 West Ralston Road
Indianapolis, Indiana 46221-9678

Re: Councillor Gray Investigation

President Cockrum:

I write in response to your letter of March 28, 2008, in which you asked if our office is currently investigating Councillor Gray.

No investigation of Councillor Gray has been initiated since December 31, 2007. Moreover, after a thorough review of our records and discussions with our staff, I can confirm that there is no pending investigation of Councillor Gray.

For your benefit, I have enclosed copies of the April 13, 2007, minutes of the Board of Ethics, at which members of the Board discussed Councillor Gray's 2006 Statement of Economic Interest at some length. It appears it was the unanimous conclusion of the Board to recommend that Councillor Gray "file an amended Statement of Economic Interest for 2006 disclosing his association with Trotter Construction." We have no other records on that subject.

Furthermore, we have no records that the Board considered whether engagement of Mr. Haith by Councillor Gray constituted a conflict of interest.

Please let me know if you have any further questions or concerns. My direct line is 327-4087 and my e-mail address is ccotteri@indygov.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris W. Cotterill", enclosed within a large, loopy oval.

Chris W. Cotterill
Corporation Counsel

Enclosures

Office of Corporation Counsel

1601 City County Building | (317) 327-4055
200 East Washington Street | (fax) 327-3968
Indianapolis, Indiana 46204 | indygov.org

APRIL 13, 2007

NOTICE OF A MEETING
CITY OF INDIANAPOLIS-MARION COUNTY BOARD OF ETHICS

I, Kobi M. Wright, Secretary of the City of Indianapolis-Marion County Board of Ethics, hereby give notice that a meeting of the Indianapolis-Marion County Board of Ethics has been called, to be held Friday, April 13, 2007, at 1:00 p.m., in Room 260, of the City-County Building.

Kobi M. Wright

For accommodations needed by persons with disabilities planning to attend, please call 327-4055.

AGENDA

April 13, 2007

1:00 p.m.

- Consideration of request submitted by Monroe Gray, Jr.

**Minutes of the Meeting of the
City of Indianapolis-Marion County Board of Ethics**

Suite 1601, City-County Building
200 E. Washington Street
Indianapolis, IN 46204
April 13, 2007

A meeting of the City of Indianapolis-Marion County Board of Ethics (Board) was held in Room 260, City-County Building, 200 E. Washington Street, Indianapolis, IN on April 13, 2007 at 1:00 p.m.

The following Board members were present: Janet Madden Charles, Chairperson; ^{Deborah} ~~Bobbie~~ Bonnet; Dan Ladendorf; Olga Villa Parra; and Kobi Wright, Corporation Counsel and Secretary to the Board. Board member Paul Morgan was present at the beginning of the meeting, but left after a brief remark. Also present was Monroe Gray, Jr., President of the City-County Council; Aaron Haith, counsel to the City-County Council; and Ellen Gabovitch, counsel to the Board.

The meeting was called to order by Chairperson Charles for the purpose of considering a request submitted by Mr. Gray. Mr. Morgan recused himself from participation because he had made a contribution to Mr. Gray's campaign in October 2003.

Mr. Wright read Mr. Gray's request (attached to these minutes as Exhibit A) to the Board. He told the Board that he had confirmed with Mr. Haith that the reference in the letter to Sec. 293-105 (e) of the Revised Code of the Consolidated City and County (Code) should instead be a reference to Sec. 293-104 (e). Mr. Wright reported to the Board about the opinion he had expressed when questioned about this issue by local media outlets.

He said that he has a running practice when asked by someone completing the Board's "Statement of Economic Interest" (Statement) whether he/she should disclose something on the form to respond that "if you have to ask, you should disclose it." He tells those that ask that there is no reason not to "over disclose". He further stated that in this particular case, he had told the media that he did not believe that Mr. Gray was required to disclose the business relationship at issue here for several reasons. Initially, this is a matter of first impression. The ethics provisions of the Code look to whether an officer is benefiting with taxpayer dollars. The Indianapolis Public Schools (IPS) are not a part of City/County government, so Mr. Gray would not benefit with taxpayer dollars as a result of his relationship with Trotter Construction.

Mr. Wright also stated that he did not know how far the Board would want to go, if it required this type of relationship to be disclosed on the Statement. Would it extend to the second, third, or fourth tier subcontractors? Mr. Wright told the Board that his opinion was not binding on the Board, and that this was still an open question. He noted that the Office of Corporation Counsel had received a number of requests for guidance about this issue. Ms. Charles noted that she believed that Mr. Wright and his office reflected the Board's opinion generally—when in doubt, an officer or employee should disclose.

Ms. Villa Parra moved that the Board should consider Mr. Gray's request for an investigation. Ms. Bonnet seconded the motion which passed unanimously.

Ms. Charles asked Mr. Gray if he was available for questions and noted that the Board would also like to speak with Mr. Haith. She stated that she appreciated Mr. Gray's attendance at the meeting and his willingness to cooperate. There is a lot of confusion and this creates an opportunity to consider the Code and educate the public. For instance, the Code does not speak about taxpayer dollars only—the money could be private. She stated that she had three categories of questions to ask Mr. Gray: what is his relationship with Mid-Region Concrete; what is his relationship with Trotter Construction; and what was he told about what he had to disclose.

Ms. Charles reviewed the "Standards of Ethical Conduct" set out in the Code as well as the disclosure provisions. She noted that the purpose of these provisions is transparency, and that secrets erode the confidence of the public. The Board is supposed to liberally construe these provisions and to keep in mind what the public expects. Ms. Charles stated that it was her hope to not spend time parsing the words of the Code.

Mr. Gray stated that he is the majority owner of Mid-Region Concrete. Ms. Charles read the definition of "compensation" from the Code and asked whether Mid-Region received compensation. Mr. Gray responded in the affirmative and acknowledged that Mid-Region was paid for the work it performed. Ms. Charles stated that the Statement required disclosure "to the best of your knowledge". It does not require research. Ms. Charles asked Mr. Gray whether he had personal knowledge that Trotter Construction did business with the City. Mr. Gray responded that he knew that Trotter had business with the City, but that there was confusion. In response to Ms. Charles' question, Mr. Gray stated that he had consulted with Mr. Haith. Mr. Gray stated that there was confusion because this was not a City project. He has discussed the form and asked how far someone would have to go. He also discussed this with several other lawyers that he knows who said that he did not have to disclose this. Had he known he should report everything, it would have been less troublesome to do so and let the Board decide.

Ms. Charles read question number seven from the disclosure form: "Have you received any compensation from any business entity which, to the best of your knowledge, is doing or contemplates doing business with an agency of the City of Indianapolis or Marion County during your term of office or employment with an agency of the City of Indianapolis or Marion County?" Mr. Wright noted that he agreed with Ms. Charles that this provision does not apply only to City work. Mr. Gray stated that he wondered how many people read the Code.

Ms. Bonnet asked Mr. Gray to describe the relationship between Mid-Region Concrete and the other businesses working on the IPS project. She noted that she had avoided reading newspaper articles about this issue and asked what is the allegation against Mr. Gray. Mr. Gray responded that as a result of a sequence of articles in the Indianapolis Star, he thought this issue should be brought to the Board. Ms. Bonnet asked whether there was an accusation of wrongdoing by Mr. Gray other than the newspaper articles, and he answered that there was not.

Mr. Ladendorf noted that the Board spends hours each year poring over these Statements. Checking for conflicts comes as second nature to lawyers. He knows how confusing the forms can be because he had to fill one out for many years as an employee. Mr. Ladendorf asked Mr. Gray whether at the time he filled out the form he knew that Trotter Construction was doing business with the City. Mr. Gray responded that he did, but that he thought this question on the form applied to City work. In answer to Mr. Ladendorf's question, Mr. Gray stated that he had consulted with legal counsel who said that he did not have to report this. Mr. Ladendorf asked whether Mr. Gray would agree with him now that this did not apply only to City work. Mr. Gray said that he agreed now, but that he had assumed something different at the time.

Ms. Villa Parra asked Mr. Gray to confirm that he was the principal owner of Mid-Region Concrete. Mr. Gray stated that many people have called him and did not understand what his relationship with the City had to do with Trotter Construction. Mr. Ladendorf responded that there is a perception that in your position there is a possibility of influence.

Ms. Charles stated that while lawyers have an affirmative duty with respect to checking for conflicts, she doesn't agree that is the case here in the sense that the question is asked "to the best of your knowledge". She thinks a person needs to have specific knowledge. That also goes to the issue of governability of this disclosure requirement. Ms. Charles stated that she would like the Board to talk about what the word "you" in question seven means with respect to who received compensation from Trotter Construction. Mr. Gray stated that checks were not made out to him; they were made out to Mid-Region Concrete. Those checks did not go directly into his pocket.

Mr. Ladendorf stated that he believed that a person could not hide behind his company. Mr. Gray noted that he did not try to hide that. Ms. Charles agreed, but thinks this is why there have been a lot of inquiries. Mr. Ladendorf stated that: "if it would not surprise you (if a business entity with which you are doing business is doing business with the City), maybe you should inquire".

Ms. Bonnet stated that she wanted to go down a different path. She asked Mr. Gray if any matters having to do with Trotter Construction have come before the City-County Council. Mr. Gray responded that Trotter's contracts are public works contracts that go before a board separate from the Council. The Council does not award contracts. Mr. Wright noted that an expansion of minority business enterprise goals could benefit Trotter. Mr. Ladendorf considered the definition of pecuniary interest. Mr. Gray stated that Councillors recuse themselves all the time, but he did not need to do so.

Ms. Villa Parra asked Mr. Gray why, besides confusion, he submitted the letter to the Board. Mr. Gray responded that he did so as a result of the articles written by Brendan O'Shaughnessy and the editorial board of the Indianapolis Star. Mr. Gray wanted to clear his name and to clarify that if there was a violation, it was unintentional. He thanked the Board, noting that this affected him and a lot of others. He stated that in the future, to be safe, he would put this on the form.

Ms. Charles asked Mr. Haith to come forward, noting that there did seem to have been some confusion. She asked him to relate the circumstances of his advice to Mr. Gray. Mr. Haith stated that he had not been familiar with Trotter Construction. He asked who had paid Mid-Region. He was fairly certain that he told Mr. Gray that because this compensation was through the School Board, and the School Board had nothing to do with the City of Indianapolis, he did not have to disclose. He is now advising those who ask to disclose to avoid attack. He did not believe a person was required to disclose, but was required to avoid self-dealing. He looked to canons governing lawyers for guidance. Mr. Haith stated that he believed that disclosure was not needed to meet the spirit of the Code.

Ms. Bonnet stated that she had not heard any allegation of harm. Mr. Haith stated that he gives general advice and may not have inquired deeply enough. Ms. Charles noted the level of confusion which she found surprising, yet genuine. She stated that there was misinformation out there. Ms. Villa Parra acknowledged that some people do not pay much attention to the Statement of Economic Interest. The harm, she stated, is to the trust people have in the City, and that cannot be measured.

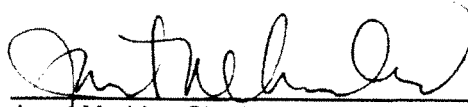
Ms. Bonnet stated that Mr. Gray erred in his answer to question seven. She said that she is convinced that it was an honest mistake and that there was no harm. We have a responsibility to educate, she said, and at a later time we should look at that. She noted that we might want to be more clear on the form. Mr. Ladendorf agreed that Mr. Gray had made a mistake and that he had admitted it. In retrospect, Mr. Haith said he should have asked more questions. Mr. Ladendorf said that he did not think that the Board has to find harm. Trust is immeasurable, he said. He stated that the way this came to the Board is unique. No complaint was filed, and Mr. Gray brought it to the Board himself. This is a larger issue than the ethics ordinance. Mr. Ladendorf stated that he believed that there was a technical violation of the Code.

Ms. Charles stated that the Board was in total consensus that Mr. Gray should have disclosed this relationship. She said she believed that the motion should reflect a lot of confusion—it was an honest mistake. Mr. Ladendorf moved that the Board find a technical violation of Sec. 293-106 (c) (7) of the Code in that Mr. Gray failed to disclose that he received compensation from Trotter Construction. Ms. Bonnet seconded the motion, which passed unanimously. The Board then discussed what should happen as a result.

Ms. Villa Parra stated that she believed that there was not intentionality. She believed Mr. Gray was sincere and honest. Mr. Ladendorf considered the Board's options set out in Sec. 293-104 (e) of the Code. Ms. Charles noted that the minutes of the meeting will be a public disclosure of the violation. Mr. Ladendorf stated that Mr. Gray could file an amended report as a resolution. He noted that the Board does not have the ability to take "disciplinary action" against an elected official. Ms. Villa Parra noted that the Board was not dealing with a complaint. She moved that the Board recommend that Mr. Gray file an amended Statement of Economic Interest for 2006, disclosing his association with Trotter Construction. Ms. Bonnet seconded the motion, which passed unanimously.

Ms. Charles stated that the Board needed to talk about getting the word out and possibly sending out the Code. Mr. Wright asked about how far he should go with regard to contractor relationships when giving guidance. Ms. Villa Parra stated that if a person knows about a relationship, it should be disclosed. Mr. Ladendorf noted that this will be fact specific and there is no bright line. He said that Mr. Wright might suggest that someone request an advisory opinion. Ms. Bonnet thought that maybe a list of "gray areas" should be made. She suggested examining the "readability" of the Statement. Ms. Charles suggested "beefing up" the instructions next year, in particular the instructions pertaining to question seven. Mr. Ladendorf thought it might be helpful to have an employee advisory committee.

The meeting was adjourned at 3:35 p.m.



Janet Madden Charles
Chairperson



**THE COUNCIL
CITY OF INDIANAPOLIS
MARION COUNTY**

MONROE GRAY, JR.
President

March 27, 2007

Janet Madden Charles
Chair, Board of Ethics
1601 City - County Building
Indianapolis, IN 46204

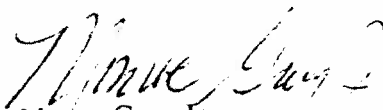
Dear Madam Chair:

Pursuant to Sec. 293-105(e) of the Revised Code, I hereby request that you rule as to any possible violation of the article that I may have committed respecting Mid Region Concrete, LLC's subcontract to perform work for the Indianapolis Public School Corporation. The allegations of such violation apparently stem from an editorial article that appeared in the Indianapolis Star on or about January 31, 2007.

Essentially, I am a principal of Mid Region which subcontracted through Schmidt & Associates (owner's representative), Powers & Sons Construction Company (construction manager) and Trotter Construction Company (general contractor) to perform work for IPS at two new school construction sites. The editorial, as best I can determine, alleges that I, as a Councillor, should have disclosed the contract on my annual Conflicts Statement and my failure to do so constitutes a violation of the Ethics Code. It seems that my violation was not to have disclosed the contract because Trotter Construction also does work with the City or County that is unrelated to their contract with Mid Region.

I am not sure and do not claim to know the answer, but, is a person in my position in violation because of the facts underlying this allegation? You may be certain that I will cooperate with your investigation. I feel that others may also benefit from your direction as to how extensive of an investigation any subcontractor must make of his or her principal's unrelated contracts or relationships in making individual disclosures.

Yours,


Monroe Gray, Jr.

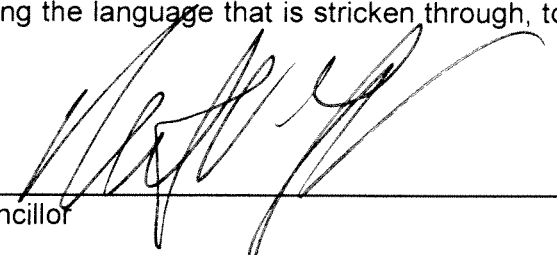
Cc: Kobi Wright, Secretary

Exhibit A

MOTION TO AMEND
Proposal No. 469, 2008

Mr. Chairman:

I respectfully move to amend Proposal No. 469, 2008, as introduced, and before this Committee, by adding the underlined text and deleting the language that is stricken through, to read as follows:


Councillor

A PROPOSAL FOR A COUNCIL RESOLUTION censuring Councillor Monroe Gray.

WHEREAS, City-County Council Resolution No. 80, 2007, established an Investigating Committee to review public allegations against Monroe Gray; and

WHEREAS, ~~that committee has been unable to obtain a quorum to make a report on its investigation; and~~

WHEREAS, two of the four members of that committee have proposed a report which recommends censure of Councillor Gray; and

WHEREAS, ~~the other members of such committee refuse to meet further the Rules and~~ Public Policy Committee has accepted the two minority reports of the Investigative Committee ~~and has issued its report to the Committee of the Whole; now, therefore:~~

BE IT RESOLVED BY THE CITY-COUNTY COUNCIL OF THE
CITY OF INDIANAPOLIS AND OF MARION COUNTY, INDIANA:

SECTION 1. The Council finds that Councillor Gray improperly used his prerogative as president to delay council consideration of resolutions to ~~censure~~ his conduct, and then by voting on the issue when his ruling was appealed to the full council, Councillor Gray voted with respect to a resolution directed at him personally. The Council further finds that by doing so, by ~~filing a false ethics disclosure form~~ Councillor Monroe Gray has undermined the public confidence in the Council and that such conduct should not pass without public condemnation.

SECTION 2. Councillor Monroe Gray be, and is hereby, censured for such conduct.

SECTION 3. This resolution shall be in full force and effect upon adoption and compliance with IC 36-3-4-14.